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No. 85-500

In The
Supreme Court of the United States
October Term, 1985

EDWARD G. CARROLL and
JOHN E. BARCLAY,

Petitioners,

v.

WILLIAM E. ALBERTS and
DONALD T. DEVINE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO REVIEW A JUDGMENT OF THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

BRIEF OF RESPONDENT, WILLIAM E. ALBERTS, IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the First and Fourteenth Amendments to the United States Constitution exempt petitioners, Edward G. Carroll and John E. Barclay, from the application of Massachusetts tort law because of petitioners' status as clergy and their asserted belief that they were performing their duties as members of a church.

2. Whether the First and Fourteenth Amendments to the United States Constitution exempt petitioners, Edward G. Carroll and John E. Barclay, from the application of Massachusetts tort law because one of the elements of damage is respondent William E. Alberts' claim that petitioners' tortious conduct caused the respondent to lose his ministerial post.

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STATEMENT OF THE CASE

This statement of the case contains the operative facts of this case and corrects the many misstatements and omissions of the petitioners' statement of the case.

In the spring of 1973 Dr. William E. Alberts, plaintiff/respondent, was a minister in The United Methodist Church. Defendant/petitioners Bishop Edward G. Carroll and District Superintendent John E. Barclay were his superiors in the Southern New England Conference of The United Methodist Church. Dr. Alberts had been a private psychiatric patient of defendant/respondent Donald T. Devine, M.D. for many years and had terminated therapy with Devine in November, 1972 (A. 104).[1]

On or about April 9, 1973, the petitioners, with full knowledge of the patient-physician relationship between Alberts and Devine (A. 110) and with full knowledge of the confidential nature of it, initiated a consultation with Dr. Devine on the subject of Alberts' mental health (A. 104). Dr. Alberts had no knowledge of this consultation with his psychiatrist and petitioners' had not sought Alberts' consent for this consultation (A. 106).[2]

Petitioners were fully aware of the confidentiality of the relationship. Barclay, in his deposition, in response to

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1. The references to the petitioners' appendix are indicated by "A—" and indicate the actual page number of the petitioners' appendix, not the page numbers indicated in the index to the appendix, which are sometimes incorrect.

2. Petitioners attempt to create a "background" to justify their actions by stating that 1) the Alberts-Devine confidential relationship had ended "stormily", 2) that a leave of absence taken by Dr. Alberts was somehow tied to mental health issues, and 3) that Dr. Alberts' ministerial appointment was up in the air because of these matters (Petition, at pages 3-4). A thorough search of the record finds no support for these "background" assertions.

the question of what did Dr. Devine say in the April 9, 1973 consultation, stated that

> [t]he important thing to me was his high professional and ethical point of view that we were asking questions that had to do with one of his patients and that he could not be completely revealing.

(R.A. 8)[3]

Carroll, in his deposition testimony regarding this same consultation, stated

> And so I said, I know that he had treated Dr. Alberts, and I wanted him to just to give me some help in terms of the kind of personality, if there was any, you know—with whom I was dealing.
>
> And he said to me, 'Well. Bishop, you're dealing with paranoia of the self-destructive type.'

(A. 108, 109).[4]

Soon thereafter, petitioner Carroll held a press conference, and even before that made a press statement that Dr. Alberts was mentally ill: "sick" and/or "paranoid," (A. 105)[5], unable "to assume pastoral responsibilities any-

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3. The reference "R.A. —" indicates the Respondent's Appendix which is appended to this brief. The Respondent's Appendix contains documents that were filed in opposition to the petitioners' motion for summary judgment and which were included in the record of this case before the Massachusetts Supreme Judicial Court. These are key documents omitted by petitioners from their appendix.

4. Any dispute concerning what was disclosed by Devine to petitioners (Petition, at page 4) arises because the defendant/petitioners and defendant/respondent Devine now point the finger of guilt at each other.

5. In his affidavit (A.105, ¶ 7) Dr. Alberts states that Carroll made a statement to the press on April 13, 1973. This date is incorrect. The correct date is May 5, 1973. April 13, 1973 was the date of another press statement from Carroll which is not in the record.

where," should "apply for 'disability leave'" and that his judgment was "based upon competent consultation." See Carroll's press release (R.A. 1)[6]. Carroll also repeated these allegations at a public meeting, stating that he would not appoint Alberts to a ministerial post because of his mental condition (A. 105).

After Carroll made these statements to the press, he and Barclay repeated the allegation of Dr. Alberts' mental illness to committees within The United Methodist Church charged with recommending the status of ministers, including the Board of Ministry. See Alberts' affidavit (A. 105) and the minutes of the Board of Ministry's Conference Relations Committee where Carroll and Barclay alleged that Dr. Alberts was mentally ill (R.A. 3).[7]

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6. Petitioners contend that it was Alberts who brought this and other issues to the attention of the press after they were discussed in the various committees and the Board of Ministry of the church (Petition, at page 4). This contention finds no support in the record.

7. This body voted, "after prolonged discussion with Bishop and John Barclay, District supt., . . ." to recommend to the Board of Ministry that Alberts be;

1) granted disability leave . . .

2) if Alberts refuses . . . , then he could be granted supernumary relationship which would provide no financial assistance . . .

3) if Alberts refuses both (1) and (2), then he would be given involuntary location . . . and he would sacrifice all relationship with the annual conference.

The minutes note in closing that

> [t]hese decisions reached on basis of discussions and statements from three psychiatrists who are knowledgeable of the Alberts' case.

(R.A. 3-4)

(Continued on following page)

Deposition testimony and documents establish that *after* petitioner Carroll consulted with Devine, on April 9, 1973, and because of the consultation, he decided that he would not reappoint Alberts. See Carroll's press release (R.A. 1-2) and the minutes of the Board of Ministry's Conference Relations Committee (R.A. 3-4) and Carroll's testimony (A. 108-109).[8]

Shortly *before* the annual meeting of the Southern New England Annual Conference in June of 1973, Carroll communicated to the chairperson of the Board of Ministry, Oliver Drake, that Dr. Alberts was "unappointable" (A. 91). At the annual meeting itself Carroll read his communication to Drake to all the ministerial delegates of the Conference. Immediately after Carroll read the communication that Dr. Alberts would not receive an annual appointment, the Board of Ministry (the same board to whom the petitioners presented their allegation of respondent's mental illness) recommended Alberts forced "retirement" and that recommendation was adopted by a majority of the ministerial members of the Conference. (A. 91).[9]

A motion was made on Alberts' behalf to submit the matter to a church trial, but Carroll, who as Bishop chaired

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(Continued from previous page)

These "proposals," such as they were, arose directly out of the breach of the patient-physician relationship. See Petition, at page 4.

8. Contrary to the impression created by petitioners (Petition, page 19) it was respondent Devine, *not* Carroll, who claimed, in deposition testimony, given ten years after Carroll's press conference, that Carroll had already made up his mind to terminate Alberts. This deposition testimony, that seems to be attributed to Carroll by the petitioners is actually that of Devine's not Carroll's (A. 111-112).

9. Bishop Carroll had the sole power to appoint ministers to a post. This is entirely separate from the decision of the Conference regarding a minister's relationship to the Conference.

(Continued on following page)

the Conference meeting, ruled the motion out of order and a trial was blocked.[10]

Dr. Alberts filed this action seeking damages for mental anguish, loss of earning capacity, and damage to his reputation (A. 5). He alleges in this action that Carroll's refusal to reappoint him or assign him to any church in the Conference and the vote of the annual conference terminating him, as well as other damages, were caused by the breach of the confidential relationship between Alberts and Devine.

The petitioners argue here, as they did before the Massachusetts Supreme Judicial Court, that their actions were cloaked with the innocence of devout clergy members.

(Continued from previous page)

Neither the ministers of the Conference nor the Board of Ministry had the power to grant or deny a minister a ministerial post. See ¶ 59 of the Book of Discipline (A. 48). Thus, it is inaccurate for the petitioners to repeatedly assert that the status and the appointment of ministers is decided by the ministers of the Conference upon the recommendation of the Board of Ministry (Petition, at pages 3, 4, 11, 15, 16 & 20).

Petitioners' claim that "literally hundreds" (Petition, at page 19) or "over three hundred" (Petition, at page 4) ministerial members of the Conference voted to retire Alberts is not supported in the record.

Petitioners make the obscure, if not irrelevant, statement that Dr. Alberts' so called "retired relation" status was for one year, as if to suggest that he had not been publicly slandered and discredited in the church and the community, by their allegations of mental illness and unemployability.

10. The petitioners' argument that "Rev. Alberts never filed charges against Bishop Carroll or Rev. Barclay for having spoken to Dr. Devine . . . (Petition, at page 5)" is misleading in that Dr. Alberts did not know of the breach of the patient-physician relationship until after he was forcibly retired.

The record does not support this claim in several respects. Their clerical duties certainly did not include calling a press conference, and making press statements about Dr. Alberts' alleged mental illness. Absent from the record is any claim or even suggestion that the petitioners sought to counsel or otherwise give support to Dr. Alberts after they consulted with his former psychiatrist.

Carroll and Devine's less than innocent state of mind is revealed by the exchange of letters between petitioner Carroll and respondent Devine, expressing concern that the tape recording Carroll made of their April 9, 1973 consultation be destroyed so that Dr. Alberts could never obtain it. (R.A. 5-7).[11]

———o———

11. Devine wrote,

> In the course of all this, I think of the Watergate affair and the Nixon tapes as well as my advice to you that you give Bill no specific details that he could distort and refute. I should be greatly relieved if your tape recording of our conference were erased. . . . Bill and his lawyers could make much of it if it were subpoenaed into court.

(R.A. 6) Carroll replied,

> May I assure you that I agree with your feeling about the disposition of the tape. As soon as I return to Boston (Aug. 24) I will find the tape and erase it. I say find it because I purposely did not label it after you forgave me for recording you without your permission and asked that our talk be kept confidential.

(R.A. 7)

REASONS FOR DENYING THE WRIT

Petitioners, through their analysis of the religion clause of the First Amendment[12], seek to exempt themselves from the application of civil tort law of the Commonwealth of Massachusetts. That law imposes liability for all damages flowing from the inducement of a psychiatrist to violate the duty of confidentiality arising from the patient-psychiatrist relationship (A. 13-14).

They argue 1) that their tortious conduct is exempt from civil liability because they were merely adhering to their religious beliefs and performing their ecclesiastical duties, and 2) that to award damages to the respondent, Dr. Alberts, for the loss of his ministry, caused by their tortious conduct, improperly invades the decision-making of a religious body.

I. THIS CASE INVOLVES UNIQUE FACTUAL CIRCUMSTANCES WHICH WOULD LIMIT THE PRECEDENTIAL VALUE OF A DECISION BY THIS COURT.

In its essentials, this is a fact-intensive case to which the Massachusetts Supreme Judicial Court applied Massachusetts tort law principles. Its impact upon the free exercise of religion clause of the First Amendment is without significance.

This case involves a determination by a civil court that petitioners may be held liable for committing the tort of inducing a psychiatrist to breach the duty of confidentiality owed to Dr. Alberts, regardless of their religious

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12. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

proclivities. It does not involve a determination by a civil court of a religious tenet or belief. *Jones v. Wolf,* 443 U.S. 595, 603 (1979). Nor does it represent an entanglement of the state with the church. *Catholic High School Association v. Culvert,* 753 F.2d 1161, 1168-1169 (1985). Nor does it involve a statute or ruling having any purpose, other than a secular one, being incidentally applied to clergy members. *Braunfeld v. Brown,* 366 U.S. 599, 607 (1961). The respondent does not seek to litigate the petitioners' religious beliefs, nor to obtain reinstatement within the United Methodist Church. *Serbian Eastern Orthodox Dioceses v. Milivojevich,* 426 U.S. 696, 718-721 (1976), reh. denied, 429 U.S. 873. Dr. Alberts seeks to recover damages for loss of earnings, loss of reputation and mental anguish.

The Supreme Judicial Court, in its analysis of the facts, recognized that this case turned more on factual issues than constitutional ones.

> It is clear that the assessment of an individual's qualifications to be a minister, and the appointment and retirement of ministers, are ecclesiastical matters entitled to constitutional protection against judicial or other State inference. *Kedroff v. St. Nicholas Cathedral,* 344 U.S. 94, 116 (1952). *Gonzalez v. Roman Catholic Archbishop of Manila,* 280 U.S. 1, 16-17 (1929). *Kaufman v. Sheehan,* 707 F.2d 355, 358-359 (8th Cir. 1983). However, this case does not involve the propriety of the United Methodist Church's refusal to reappoint Alberts as minister of the Old West Church. Nor does this case involve Albert's qualifications to serve as a minister. A controversy concerning whether a church rule grants religious superiors the civil rights to induce a psychiatrist to violate the duty of silence that he owes to a patient, who happens to be a minister, is not a dispute about religious faith or doctrine nor about church discipline or internal or-

> ganization. Nor is a controversy concerning the causal connection between a psychiatrist's disclosure of confidential information and a minister's failure to gain reappointment such a dispute.

(A. 17.)

Dr. Alberts would have a jury decide whether there was a breach of a duty and whether that breach was the cause of his damages regardless of any religious reasons alleged.

II. THE MASSACHUSETTS SUPREME JUDICIAL COURT FOLLOWED THE HOLDINGS OF THIS COURT ON RELIGIOUS ISSUES.

In keeping with the rulings of this Court, the Massachusetts court held that:

> [a]lthough the freedom to believe "is absolute," the freedom to act "cannot be". Conduct remains subject to regulation for the protection of society.

(A. 16.)

The Massachusetts court went on to balance the interests of the Commonwealth, in protecting its citizens from unauthorized disclosures of extremely private patient-psychiatrist information, against the burden upon their exercise of religion.

Recognizing the importance to the Commonwealth of the patient-physician duty of confidentiality and reviewing its place in medical jurisprudence (A. 8-12), the court below noted that the policy of confidentiality " . . . has been urged or forecast *in una voce* by commentators in the field of medical jurisprudence (citation omitted) (A. 9)."

The court below observed that imposing liability on petitioners *would* inhibit them from engaging in the claimed "religiously motivated conduct" at issue here[13], in that they would not be able to breach the patient-physician confidential relationship with impunity. It then made a determination that the Commonwealth did possess " . . . an interest sufficiently compelling to justify the burden (A. 17)."

> As we have observed, churches have a significant interest in assessing the qualifications of their ministers, and in appointing and retiring them. But, in view of the freedom that ecclesiastical authorities and church members have to determine who the church's ministers will be, and in view of the numerous sources of relevant information available to assist those making such determinations—other than information available only from a minister's physician—a rule that prevents interference with physician-patient relationships will have little impact on the free exercise of religion. On the other hand, as we have discussed earlier in this opinion, public policy strongly favors judicial recognition of a physician's duty to honor the confidentiality of information gained through the physician-patient relationship. We conclude, therefore, that even if it be assumed, without inquiry, that the Book of Discipline or other rule of the United Methodist Church provides that Carroll and Barclay had a right, or even a duty, to seek medical information about Alberts from Devine, the First Amendment does not bar judicial inquiry into the church's proceedings culminating in Alberts's failure to gain reappointment.
>
> (A. 17.)

In objecting to the application, to them, of liability for the tort of inducing a breach of the patient-physician

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13. The Massachusetts court did not attempt to determine whether the petitioners' actions were religiously motivated, but rather assumed that they were for its analysis (A.16).

duty of confidentiality, petitioners argue that it would violate the free exercise of religion clause of the First Amendment to determine whether

> (3) the defendant did not *reasonably* believe that the physician could disclose that information to the defendant without violating the duty of confidentiality that the physician owed the patient.

(Petition, at page 8). To reach this conclusion, petitioners assert that the term "reasonable belief" means a determination of the reasonableness of some *religious* belief.

Petitioners' superficial analysis misses the Massachusetts court's holding. The readily apparent meaning of the term "reasonable belief" as used by the Massachusetts court (A. 13) is a belief about the confidential nature of the physician-patient relationship, *not* a belief about some ecclesiastical duty or privilege. The lower court concluded that

> [i]n this case, deposition testimony established that Carroll and Barclay knew of the physician-patient relationship between Devine and Alberts and that they intended to induce Devine to disclose information about Alberts.

(A. 14.)

Petitioners' misreading of "reasonable belief," as used by the court below, forms the core of their arguments.

Petitioners would also have religious doctrine bar their liability because of the existence of a judiciary within the church (Petition, pages 11-14). Aside from the impossibility of the respondent invoking a church tribunal to consider these issues, (see Petition, page 13, note 4) petitioners do not claim that the church offers a parallel tort law system that could offer compensation to Dr. Alberts

as the civil courts do. They also ignore the fact that the tortious conduct occurred in the secular world. The petitioners misread the Court's rulings concerning religious tribunals. Civil courts must respect the decisions of tribunals on *religious doctrine* not civil liability. *Presbyterian Church v. Hull Church,* 393 U.S. 440, 449 (1969). *Jones v. Wolf,* 443 U.S. 595, 602 (1979). Dr. Alberts does seeks a civil judicial decision on a secular civil rights issue, not a religious issue or doctrine.

In fact, petitioners also forget that the very church document that offers a religious tribunal also contradicts their church trial argument. See paragraph 1520 of *The Book of Discipline of the United Methodist Church* (A. 65):

> No such trial as herein provided shall be construed to deprive the accused of his legal civil rights.

(A. 65.)

III. PETITIONERS SEEK A RULING THAT WOULD VIOLATE THE ESTABLISHMENT OF RELIGION CLAUSE OF THE FIRST AMENDMENT.

At the center of the petitioners' erroneous argument is their insistence that church doctrine can control civil law. In essence they argue that if a defendant makes a claim that his tortious actions were prompted by religious doctrine, he cannot be held civilly liable.[14] Petitioners' requested exemption from the civil law creates serious First Amendment problems under the establishment of religion

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14. Petitioners, through their protective order, also would have respondent Devine exempted from civil liability because he committed his tortious acts through the inducement of clergy members.

clause and would "make the professed doctrines of religious belief superior to the law of the land and in effect permit every citizen to become a law into himself." *Reynolds v. United States,* 98 U.S. 145, 45, 164 (1878).

The Massachusetts courts would then be required to honor the religious exemption claims of the hundreds of religious denominations.[15]

If Massachusetts adopted such a court-made rule it would violate the First Amendment in that it would tend to establish religion. Such a rule would have *only* a religious purpose and no secular one. It would advance religion. It would potentially entangle the government in all denominations asserting religious prerogatives. Such a religious exemption would fail each of the three tests utilized in analyzing establishment of religion cases. *Wallace v. Jaffree,* 105 S.Ct. 2479 (1985); *Lemon v. Kurtzman,* 403 U.S. 602, 612-613 (1971).

Petitioners' position if adopted would result in a situation similar to that considered and rejected by the Court in *Thornton v. Caldor, Inc.,* 105 S.Ct. 2914 (1985). The Court in *Thornton* struck down a Connecticut statute permitting an employee to be excused from work on any day designated by him or her as a Sabbath Day, because the statute would tend to aid religions and served no secular purpose.

Pressing their argument to the furthest extent, petitioners assert that Dr. Alberts essentially waived his

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15. The Court, has recognized the existence of more than three-hundred religious denominations. *Braunfeld v. Brown,* 366 U.S. 599, 606 (1961).

civil rights when he became a minister (Petition, at pages 10, 11, 12 & 13). The factual basis for this claim is absent and it must be seen as just another aspect of petitioners' demand to be exempted from, and thus above the operation of civil law.

> The Framers did not set up a system of government in which important discretionary governmental powers would be delegated to or shared with religious institutions.

Larkin v. Grendel's Den, Inc., 459 U.S. 116, 129 (1982).

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted,

WILLIAM E. ALBERTS

By his attorneys

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ROBERT J. DOYLE
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Nine Hamilton Place
Boston, Massachusetts 02108
(617) 338-0070

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APPENDIX

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RESPONDENT WILLIAM E. ALBERTS' APPENDIX

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APPENDIX A

STATEMENT BY BISHOP EDWARD G. CARROLL
RESIDENT UNITED METHODIST BISHOP
IN NEW ENGLAND

at a

PRESS CONFERENCE
MONDAY, MAY 7, 1973, 11:00 a.m.

RE: OLD WEST CHURCH, BOSTON, AND THE
REV. DR. WILLIAM E. ALBERTS, Ph.D.

It is a painful experience for me to comment in this way on a private matter which inadvertently has become a public question in the media.

When Dr. Alberts came in to see me, as his bishop, he was accompanied by his administrative secretary, Miss Eva Young; the chairman of the Pastor Parish Relations Committee, Mr. Peter Bloom; Mr. Harry Freeman; and Mr. Ramos.

I asked Pastor Alberts to allow me to speak with him without the others present. He refused by saying that he and others accompanying him were a "corporate body" and we could discuss any matters in their presence.

After being asked about the *Boston Globe* article of April 8 and its implications concerning his future, I told Dr. Alberts that indications pointed to a possible illness which might be seriously affecting his usefulness as a United Methodist minister. I advised him that in my judgment as chief pastor, based upon competent consultation, he was not presently in a position to assume pastoral responsibilities anywhere. Therefore, I suggested that he apply for "disability leave" as provided for in the United Methodist *Book of Discipline*. I am awaiting his response to my previous proposal that he could

request the aforementioned leave status by fulfilling the conditions stipulated in the *Book of Discipline.*

As resident United Methodist bishop in New England it is my considered judgment that Dr. Alberts' former full health can be restored. It is my earnest prayer that restoration take place speedily.

My pastoral directive pertaining to Dr. Alberts is not a punitive action, because of what he calls a "marriage" of homosexuals. As far as I am concerned there was no marriage inasmuch as such a union or solemnization is not sanctioned either by the Commonwealth of Massachusetts or by the United Methodist Church. My column in the May issue of *The Methodist Churchman* explains my position on this subject. The matter of the Rev. Dr. Alberts' health was an issue of concern to me long before the recent so-called "gay wedding."

May I say that under the circumstances, according to United Methodist Church polity, the disposition of Dr. Alberts' ministerial status rests with the Southern New England Conference Board of Ministry.

The door of my office is open to Dr. Alberts always, as it is to all lay persons and clergy of our Church in New England.

APPENDIX B

THE BOARD OF MINISTRY

Southern New England Annual Conference

THE UNITED METHODIST CHURCH

May 14, 1973

The Conference Relations Committee of the Board of Ministry met on Monday, May 14, 1973, at the Holiday Inn, Rt. 1, Dedham. Attending were: Drake, Coleman, Guinn, Mott, Chorpenning Barclay, and Bishop Edward G. Carroll.

The purpose of the meeting was to review the case of WILLIAM E. ALBERTS who had appeared before the Committee on May 9, at Carter Church, Needham.

F. O. Drake presided, and after prolonged discussion with Bishop and John Barclay, District Supt., Greater Boston District, the following recommendation was drafted to submit to the Board of Ministry for vote:

It is recommended that Wm. Alberts be;

1) granted disability leave for at least one year, which would allow him some financial remuneration from MRPF and retain his full conference standing;

2) if Alberts refuses to take disability leave, then he could be granted supernumerary relationship which would provide no financial assistance & no annuity claim, but he would retain his full conference standing; (could ask for annunity);

3) if Alberts refuses both (1) and (2), then he would be given involuntary location which would have no financial assistance, and he would sacrifice all relationship with the annual conference.

These decisions reached on basis of discussions and statements from three psychiatrists who are knowledgeable of the Alberts' case.

The law firm of Nissen & Csaplar, Boston, have offered counsel to the Bishop if necessary.

Respectfully submitted,

Lloyd E. Chorpenning,
Registrar

APPENDIX C

BAY STATE MEDICAL ASSOCIATES
Ten Hawthorne Place
Charles River Park
Boston, Massachusetts 02114
617-742-8870

Donald T. Devine, M.D.
Wallace F. Haley, M.D.
Malcolm L. Rosenblatt, M.D.
Benjamin Simon, M.D.

August 8, 1973

Bishop Edward G. Carroll, Sr.
General Delivery
Picton, Ontario
Canada

Dear Bishop Carroll:

As you doubtless know, Bill Alberts has appeared in the press and on television announcing his intentions of sueing us. In one of his statements, he said that two other United Methodist ministers had told him that I had "illegally breached my confidence and allowed the Bishop to rifle his file on me."

While there is no substance to his charges, there are only two Methodist clergy who have first hand knowledge of your conference with me and of what actually did go on at that time. I doubt very much that either you or the District Superintendent, John Barclay, would have supplied Bill with such erroneous material. Lawrence D. Shubow, Esq. has written me that he is representing Bill about this grievance. I have turned the matter over to my malpractice insurer.

In the course of all this, I think of the Watergate affair and the Nixon tapes as well as my advice to you that you give Bill no specific details that he could distort and refute. Accordingly, I should be greatly relieved if your tape recording of our conference were erased. While I do not feel that it contains any breeches of confidence, Bill and his lawyers could make much of it if it were subpoened into court.

I leave this matter to your discretion, but should be interested to know your reaction.

Respectfully,

/s/ Donald T. Devine
Donald T. Devine, M.D.

CC: Rev. John Barclay

APPENDIX D

General Delivery
Picton, Ontario
Canada
August 17, 1973

Dr. Donald T. Devine
Ten Hawthorne Place
Charles River Park
Boston, Mass. 02114

Dear Dr. Devine:

Your letter came when I was back in the States. This accounts for a delay in my answer to you. May I assure you that I agree with your feeling about the disposition of the tape. As soon as I return to Boston (Aug. 24th) I will find the tape and erase it. I say find it because I purposely did not label it after you forgave me for recording you without your permission and asked that our talk be kept confidential.

I pray that God will somehow let Bill know that I am really concerned about him as a person and as a Christian Minister.

Very sincerely yours,

Edward G. Carroll

APPENDIX E

Q. What did you say, sir, during that meeting?

A. I was the one who—

MS. GRIFFIN: Just what you said.

A. I expressed apprehension to Dr. Devine for his granting us the time and trusted that the exchange was helpful to the Bishop and would enable the program—the helpfulness for our brother Dr. Alberts could be worked out.

Q. That's what you said at sometime in the meeting?

A. I said that following the Bishop's expression.

Q. What did Dr. Devine say, sir?

A. The important thing for me was his high professional and ethical point of view that we were asking questions that had to do with one of his patients and that he could not be completely revealing.

Q. I think my question, Reverend, was: What did he say?

MS. GRIFFIN: I believe he just answered part of what the doctor said.

Q. Are you quoting the doctor with that?

A. I am mixed—

MS. GRIFFIN: Was the answer that you last gave something that Dr. Devine said?